THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.17213 OF 2005

Dated: 17th November, 2005.

Between:

Bolisetty Prabhu Das … Petitioner

And

1. The District Collector (Co-operation)
   East Godavari District at Kakinada,
   And others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.17213 OF 2005

ORDER :

This writ petition is filed aggrieved by the order passed by the 1st respondent – District Collector (Co-operation), East Godavari District, Kakinada, dated 25-7-2005 under Section 15-A of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') directing merger of Magatapalli Primary Agricultural Co-operative Society into Edarada Primary Agricultural Co-operative Society which has been identified as 2nd Focal Point Society in Mamidikuduru Mandal.

The petitioner claims to be a Member and Ex-President of Primary Agricultural Co-operative Society (PACS), Magatapalli of Mamidikuduru Mandal in E.G. District. The 1st respondent issued a notification dated 20-06-2005 in terms of G.O.Ms.No.176, Agriculture & Co-operation (Coop.V) Department, dated 14-6-2005 notifying the Non-viable Societies identified in Mamidikuduru Mandal for proposed amalgamation / merger in Nagaram Co-operative Rural Bank Limited, Nagaram which is identified as Focal Point Non-viable Society and inviting objections or suggestions from the societies or any members, depositors, creditors, employees,

other persons connected with the affairs of societies within 21 days from the date of publication of the notification. Magatapalli PACS was one of the six societies identified as 'Non-viable Societies' which were proposed to be amalgamated with Nagaram Co-operative Rural Bank Limited. In pursuance thereof, the members of Magatapalli PACS passed a resolution in a General Body Meeting opposing the proposed amalgamation and submitted their objection to the 1st respondent on 26-6-2005. However, the said objections were not considered in proper perspective and the impugned notification dated 25-7-2005 has been passed by the 1st respondent. The main grievance of the petitioner is that whereas in the notification dated 20-06-2005 issued under Section 15-A (1) (e) of the Act objections were invited against the proposed merger of Magatapalli PACS with Nagaram Co-operative Rural Bank Limited, strangely under the impugned notification the 1st respondent ordered merger of Magatapalli PACS with Edarada PACS which is said to have been identified as 2nd Focal Point Society in Mamidikuduru Mandal. The petitioner contends that such modification is contrary to the guidelines issued by the Government under G.O.Ms.No.176, dated 14-6-2005 apart from being violative of the fundamental principles of natural justice since the petitioner and other members of the society were not afforded an opportunity to raise their objections against such merger. The petitioner also contends that Magatapalli PACS is financially sound with sufficient working capital and it is having all facilities including own building consisting of Bank-hall, Meeting-hall, Sales-counters and other facilities such as Telephone, Post-office, High-school and etc. That apart, the society is having additional vacant site of 20 cents for further development and it is situated just adjacent to R & B Road, whereas Edarada PACS is located in a narrow road which is not at all convenient to the members or depositors to reach. Moreover, the turnover of Magatapalli PACS is Rs.90 lakhs as against the turnover of Rs.70 lakhs of Edarada PACS. Thus, according to the petitioner, Magatapalli PACS is more focal than Edarada PACS and there is no justifiable reason to identify Edarada PACS as 2nd Focal Point Society and to merge Magatapalli PACS with it. The petitioner also furnished several other statistical details to substantiate the plea that Magatapalli PACS is financially sound and contended that the same cannot be identified as 'Non-viable Society'. It is also contended that since Magatapalli PACS is not in receipt of State aid as defined under Section 43 of the A.P. Co-operative Societies Act the provisions of Section 15-A of the Act cannot be invoked and therefore the

impugned order is also without jurisdiction.

In the counter-affidavit filed by the District Co-operative Officer, E.G. District, Kakinada, on behalf of the respondents, all the allegations made by the petitioner have been denied and it is stated that though the General Body of Magatapalli PACS passed a resolution against the proposed merger, the General Body failed to mention any specific reason in support of their resolution. The said objections which were found to be vague and unfounded were therefore rejected. That apart, out of total 2477 members of the society only 3 members attended the General Body Meeting including a Departmental Officer / Chair-person. As a matter of fact, the petitioner himself did not attend the said meeting. That itself shows that the members of the society are not interested in continuing the co-operative society situated in their village. It is further explained that the objections of Edarada PACS were accepted as the said PACS was centrally located and considered to be most deserving of all the Non-viable PACSs proposed for merger. Hence, the same has been identified as 2nd Focal Point Society in Mamidikuduru Mandal as per the parameters prescribed in para-7 (f) and the provisions of para-7 (g) of G.O.Ms.No.176, dated 14-6-2005. Therefore, in modification of the notification dated 20-06-2005, the 1st respondent identified Edarada PACS as 2nd Focal Point Society and merged Aduru PACS and Magatapalli PACS with it w.e.f. 25-7-2005. Similarly, having considered all the objections, the 1st respondent ordered merger of Pedapatnam Lanka PACS, Mogilikuduru PACS and Pedapatnam Agraharam PACS of Mamidikuduru Mandal in the identified First Focal Point Society i.e., Nagaram Co-operative Rural Bank Limited in exercise of the powers conferred under Section 15-A of the Act. It is also specifically stated that Edarada PACs is located between Nagaram Co-operative Rural Bank Limited and Mamidikuduru village/Mandal and Magatapalli PACS, and therefore the impugned merger is convenient for all purposes. All other allegations made by the petitioner have been denied and it is stated that keeping in view the geographical contiguity two Focal Point Societies have been identified in two different contiguous blocks in the Mandal under the impugned notification and the said action is strictly in accordance with the provisions of Para-7 (e) and (g) of G.O.Ms.No.176, dated 14-6-2005, and therefore the petitioner is not entitled to the relief as prayed for.

I have heard the learned Counsel for both the parties and perused the material on record.

It is relevant to note that Section 15-A of the Act specifically deals with identification of viability of societies and consequences thereof. As per Sub-section (1), if the Registrar is of the opinion that in respect of a society or societies which are in receipt of State aid, it is necessary to amalgamate or merge any society with any other such society or to divide and restrict or transfer the area of operation of a society or to liquidate a society, he may identify the viable and non-viable societies which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamate or liquidate as the case may be. Thus, the area of operation of each such society or societies to be retained, divided or amalgamated with any other society has to be specified by a notification to be published in the prescribed manner inviting objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within 21 days from the date of publication of the notification. The purposes for which such amalgamation or merger may be affected were also enumerated under Sub-section (1) of Section 15-A of the Act. After receiving the suggestions or objections, if any, the Registrar after making necessary enquiry has to make an order and publish it in the prescribed manner. As per Sub-section (3) of Section 15-A of the Act, the assets of such amalgamated or divided society shall stand transferred to and its liabilities shall devolve on, the society with which it is amalgamated.

So far as the manner of publication of the notice as well as final order is concerned, Rule 11-A of the A.P. Co-operative Societies Rules provides that the Registrar of Co-operative Societies shall publish the notification under Section 15-A of the Act and final order under Sub-section (2) of Section 15-A by affixture in the office of the Divisional Co-operative Officer and in the respective Offices of the Society or Societies affected by such amalgamation and also in the Gram Panchayat and Mandal Revenue Offices situated in the area of operation of societies affected by such amalgamation.

A perusal of Section 15-A of the Act read with Rule 11-A of the Rules makes it clear

that the members, depositors, creditors, employees or other persons concerned with the affairs of the society shall be provided an opportunity to put-forth their versions by inviting objections from them with regard to the proposed amalgamation. The said notification inviting objections shall specify the area of operation of each such society or societies to be amalgamated with any other society indicated in the notification.

There can be no dispute about the fact that in the instant cases, the procedure as prescribed under Section 15-A read with Rule 11-A has been followed since admittedly there was publication of notification inviting objections from the members of the respective societies. As a matter of fact, Magatapalli PACS submitted its objections opposing the proposed amalgamation.

However, the grievance of the petitioner appears to be that whereas under the notification inviting objections, it was proposed that Magatapalli PACS will be merged with Nagaram Co-operative Rural Bank Limited, contrary to the same, under the impugned notification Magatapalli PACS has been merged with Edarada PACS which according to the petitioner is less focal than Magatapalli PACS. May be that, in the notification dated 20-06-2005 the merger of Magatapalli PACS with Nagaram Co-operative Urban Bank Limited was proposed. However, a perusal of the objections submitted by Magatapalli PACS, the Gram Panchayat, MPTC as well as the residents of Magatapalli village make it clear that all of them were very well aware that Magatapalli PACS was likely to be merged with Edarada PACS and they have specifically opposed the same stating that Magatapalli is more focal with the turnover of Rs.90 lakhs and being financially sound. Hence, it cannot be held that the impugned action of the respondent is in violation of the principles of natural justice. The members of PACS Magatapalli in clear terms raised their objections against the merger with Edarada PACS and the same were considered by the 1st respondent before passing the impugned notification dated 25-7-2005. Hence, no prejudice was caused to the members of Magatapalli PACS on account of non-mentioning of the proposed merger of Magatapalli PACS with Edarada PACS while inviting objections. That apart, para-7(g) of G.O.Ms.No.176, dated 14-6-2005

empowers the Government to identify more than one Focal Point Society subject to the parameters listed out at clause (f) of para-7. Hence, it cannot be held that identifying a 2nd Focal Point Society is without jurisdiction. Having regard to the language of clauses (f) & (g) of para-7, it is clear that the Government if for any reason is of the opinion that the geographical contiguity comes in the way of amalgamation of Non-viable Societies in any Mandal can identify more than one Focal Point Society.

In the light of the object with which Section 15-A of the Act was introduced into the Act in the year 1976 with particular reference to the reasons specified in G.O.Ms.No.176, dated 14-6-2005 while prescribing the guidelines for implementation of the scheme, it is clear that the whole exercise has been undertaken by the Government on the basis of a policy decision to restructure the Cooperative Credit Institutions in the State for their strengthening and effective functioning and for making them viable. For the said purpose, an Expert Committee was constituted which suggested a package of reforms and on the basis of the report of the said Expert Committee, norms were prescribed for identifying the Viable and Non-viable Societies. That apart, the Task Force Committee constituted by the Government of India for the purpose of revival of Cooperative Credit Institutions also submitted a report to the Government of India suggesting two norms for identifying Viable Societies. Hence, it cannot be said that the power conferred on the 2nd respondent to identify the Viable and Non-viable Societies is unguided, but the exercise has to be done strictly in accordance with the norms suggested by the Expert Committee constituted by the State as well as Task Force Committed constituted by the Government of India and in the manner prescribed under G.O.Ms.No.176, dated 14-6-2005. In the cases on hand, admittedly, the procedure prescribed under Section 15-A of the Act has been scrupulously followed.

It is true that Magatapalli PACS passed a resolution opposing the proposed merger. However, the objections which were found to be extraneous to the essential policy of the State were rejected and accordingly the impugned notification was issued. In the absence of any specific allegation of mala fides, much less non-compliance with any statutory provision, the decision of the 1st respondent under the

impugned notification cannot be found fault with warranting interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

The contention of the petitioner that the PACS, Magatapalli is not receiving the State aid is also liable to be rejected in view of the explanation offered by the respondents in the counter-affidavit. I find force in the contention of the learned Government Pleader that the financial aid in any form from the Government including the subsidies shall be termed as 'State Aid' within the meaning of Section 43 of the Act. Since the petitioner does not dispute the fact that the State Government has contributed amounts towards share capital besides granting managerial subsidy, there is no substance in the contention of the petitioner that PACS, Magatapalli is not receiving State aid.

It is relevant to note that the petitioner has not challenged the policy of the State regarding the merger of the Non-viable Primary Agricultural Cooperative Societies, but he is only assailing the order of merger on the ground that the same is arbitrary, illegal and in violation of the principles of natural justice.

As stated above, since the petitioner failed to make out any case to establish that the impugned order is vitiated on any of the above grounds, the relief as prayed for cannot be granted. The Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.

17th November, 2005.

Note:- CC in 3 days.

(B/O)

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